



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2005

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2005-02950

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221408.

The Travis County Sheriff's Office (the "sheriff") received a request for information pertaining to sexually-oriented businesses located in Travis County. You state that the sheriff has released a list of sexually-oriented businesses to the requestor, but claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you state that the sheriff "does not have a list that shows all sexually oriented businesses ("SOBs") that operate in Travis County, their addresses, phone, and owner's names." While the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information, it does require a governmental body to make a good-faith effort to relate a request to

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990); *see also* Open Records Decision Nos. 561 at 8-9 (1990), 534 at 2-3 (1989). Here, you have submitted applications to the sheriff from persons who, you inform us, want permits to operate sexually-oriented businesses outside the city limits of any municipality within the county. Thus, you have submitted for our review information within the submitted applications that is responsive to the request. Accordingly, the responsive information must be released unless it falls within an exception to disclosure under the Act. *See* Gov't Code § 552.002, 552.006, 552.021.

We note, however, that much of the submitted information is not responsive to the request for information. The requestor seeks only the business name, business address, telephone number, and owner of each sexually orientated business in Travis county. Thus, this ruling does not address the public availability of the submitted information that does not consist of these categories of information, and the sheriff is not required to release such information in response to this ruling. Because we find that this particular information is not responsive to the request for information, we need not address your claims for exception of this information, including section 552.101 in conjunction with common law privacy, and sections 552.130, 552.136, and 552.137 .

Next, you acknowledge, and we agree, that the sheriff did not submit the requested information within the deadlines of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In failing to comply with section 552.301, the sheriff has waived its claim under section 552.108, and thus it may not withhold any of the submitted information under that section. However, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires you to withhold the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You contend that the requested information is confidential under the decision in *N.W. Enterprises, Inc. v. City of Houston*, 352 F.2d 162 (5th Cir. 2003). The question in *N.W. Enterprises* was the constitutionality of an ordinance of the City of Houston regulating sexually-oriented businesses and specifying the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. With regard to the required public disclosure under the Act of certain information provided by entertainers and managers in their permit applications, the district court in *N.W. Enterprises* concluded that

[T]here is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed to the public. The Court concludes further that the potential for disclosure is likely to have a chilling effect on the applicants' protected speech. These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the city.

N.W. Enterprises, Inc. v. City of Houston, 27 F.Supp.2d 754, 843 (S.D.Tex.1998). The Fifth Circuit Court of Appeals, in upholding the confidentiality determination of the district court, stated that “[b]ecause the district court declared the information on entertainer and manager permit applications confidential under the [Act], the City cannot disclose it to the public.” *N.W. Enters.*, 352 F.2d at 195. The appellate court also agreed that the entertainers’ and managers’ home addresses and telephone numbers are confidential. *Id.* Thus, pursuant to that decision, information revealing the identity of an employee of a sexually-oriented business, including the employee’s home address and telephone number, is generally confidential. However, *N.W. Enterprises* did not address the confidentiality of the type of information requested here. Thus, we find that the information requested, including the business names, names of the business owners, business addresses, and business telephone numbers of all Travis County sexually-oriented businesses, is not confidential under the decision in *N.W. Enterprises*. Accordingly, none of the submitted responsive information is confidential pursuant to that decision, and the sheriff may not withhold the submitted information under section 552.101 on that ground. Thus, we conclude that the sheriff must release the responsive submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

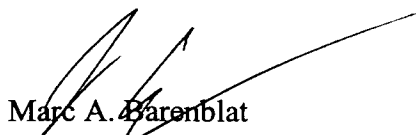
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 221408

Enc. Submitted documents

c: Mr. Mark Weaver
Pastor
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(w/o enclosures)